

DISCUSSION OF THE CLAIMS

Claims 1-3, 7-8, and 10-11 are pending in the present application. Claims 4-6, 9, and 12-13 are canceled claims. Claims 1, 7, and 11 are amended herein to adopt the suggestions set forth on pages 2 and 3 of the September 16, 2010 Office Action.

No new matter is added.

REMARKS

Applicants thank the Office for withdrawing the finality of the Office Action of April 1, 2010. The Office now newly rejects the claims for double patenting over co-pending applications 11/573,586 and 11/202,276. The present application is the senior case with respect to the aforementioned co-pending applications. Applicants draw the Office's attention to MPEP § 804(I)(B)(1) which states in relevant part:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

The claims of co-pending 11/202,276 are rejectable on other grounds (see the Office Action of September 16, 2010 in the co-pending application which is assigned for examination in charge of the present application). The 11/573,586 application has been docketed for examination but has not yet been examined on the merits.

Applicants submit that under the present circumstances, i.e., where the present application is the senior case in view of co-pending applications cited for obviousness-type double patenting, it is appropriate to withdraw the obviousness-type double patenting rejection from the present application and allow the present application to issue as a patent without a Terminal Disclaimer.

Irrespective of the legal status of the present claims for obviousness-type double patenting as described at the MPEP § 804, Applicants reserve the right to file a Terminal Disclaimer to expedite prosecution, if desired.

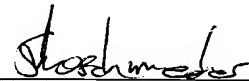
Applicants note that the present application identifies "new grounds for rejection". Applicants thus submit that the present Office Action should thus properly be a non-Final

Office Action. Applicants thus respectfully request withdrawal of the finality of the present Office Action.

For the reasons discussed above in detail, Applicants request withdrawal of the rejections and the allowance of all now-pending claims.

Respectfully submitted,

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